

IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

TRANSCRIPT OF DETENTION PROCEEDINGS

BEFORE THE HONORABLE THOMAS M. COFFIN

UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

A.M. SESSION - PAGES 1 THROUGH 45

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2 FOR THE DEFENDANT: Direct Cross ReD ReX

3 GARY MESIBOV

4 By Mr. Lessley 4 -- -- --

5 By Ms. Gold -- 30 -- --

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1 (Tuesday, June 5, 2012; 11:07 a.m.)

P R O C E E D I N G S

3 THE CLERK: Now is the time set for Case Number
4 11-60097, *United States of America versus Cody Seth*
5 *Crawford* for continuation of oral argument on the sealed
6 motion.

7 Dr. Mesibov and Mr. Wanly are by telephone, as
8 is Ms. Gold.

9 THE COURT: Okay. All right. Dr. Mesibov, can
10 you hear me? This is Judge Coffin.

11 DR. MESIBOV: Yes, sir.

12 THE COURT: And Ms. Gold?

13 MS. GOLD: Yes, Your Honor.

14 THE COURT: And Mr. Wanly?

15 MR. WANLY: Yes, sir.

16 THE COURT: All right. So are you going to ask
17 Dr. Mesibov any questions, Mr. Lessley, or just open
18 this up for Ms. Gold to cross-examine him?

19 I've got his report. I've reviewed his report
20 that was submitted. So I have that information in front
21 of me.

22 MR. LESSLEY: Your Honor, I'm -- I would like
23 to examine Dr. Mesibov first.

THE COURT: Go ahead.

25 THE CLERK: Should I swear the witness, Judge?

1 THE COURT: Yes.

2 THE CLERK: Dr. Mesibov, could you please raise
3 your right hand.

4 (The witness was sworn.)

5 THE CLERK: Thank you. Could you please state
6 your name for the record, spelling your first and last
7 name.

8 THE WITNESS: Gary, G-A-R-Y, Mesibov,
9 M-E-S-I-B-O-V.

10 THE CLERK: Thank you.

DIRECT EXAMINATION

12 BY MR. LESSLEY:

13 Q. Dr. Mesibov, this is Bryan Lessley. You've
14 been retained by my office to assist us with various
15 aspects of our representation of Cody Crawford; is that
16 correct?

17 A. Yes, sir.

18 Q. And did you receive the motion for pretrial
19 release that I filed with the court with several
20 attachments?

21 A. I did.

22 Q. And Exhibit A is what appears to be your
23 curriculum vitae. Is that, in fact, what it is?

24 A. Yes, sir.

25 Q. Your current employment is as an emeritus

1 professor at the University of North Carolina at Chapel
2 Hill; is that correct?

3 A. Yes, sir, it is.

4 Q. And tell us -- we're all fairly familiar with
5 academics, but tell us in a nutshell what emeritus
6 professor means?

7 A. Emeritus professor means that you have achieved
8 the highest rank at the university and have served with
9 distinction. And when you officially retire from the
10 university, which I have done, so I'm no longer paid by
11 the university, you have a lifelong connection. So I
12 continue to work here at the university office, I
13 continue to work with students, and I also work with
14 clients and consult with other programs. But emeritus
15 is my connection to the University of North Carolina.

16 Q. And your field of study through your career is
17 in psychology; and specifically with some emphasis on
18 autism; is that correct?

19 A. Right. Psychology, developmental disabilities,
20 and probably most intensively autism.

21 Q. And in addition to being an emeritus professor
22 with university connections, do you also maintain any
23 clinical practice or supervisory functions?

24 A. I do. I continue to work with students. I
25 continue to collaborate on grants. I continue to work

1 with clients and families. And continue to consult with
2 programs both nationally and internationally.

3 Q. And I'm not going to ask you to go through your
4 CV at great length but there are a few aspects of it I'd
5 like to touch on momentarily.

6 First, at the bottom of page 5 and continuing
7 on to page 6, there is a listing of professional
8 societies. And you've listed yourself as a fellow of
9 the American Psychological Association in various
10 respects. Can you tell us what that means, please.

11 A. Well, the regular status for a psychologist in
12 that organization is as a member. But there is a
13 special committee -- fellows committee -- in each
14 division for people who have achieved higher status and
15 more accomplishments in their area. And I'm a fellow in
16 clinical psychology, also in developmental disabilities,
17 also in pediatric psychology.

18 Q. And continuing down that same page 6, we see
19 editorial appointments, and specifically the editor of
20 the Journal of Autism and Developmental Disorders.
21 Could you tell us about that journal and about your
22 involvement with it.

23 A. Well, the Journal of Autism and Developmental
24 Disorders was actually the first interdisciplinary
25 journal in the field of autism. It was started by the

1 person who was the first person who coined the term
2 autism, Leo Kanner, and he was a professor at Johns
3 Hopkins and wrote the paper in 1943. And he was the
4 first editor and has remained the largest, which means
5 the biggest circulation and then they had citation
6 indexes in our field, which refers to how often a
7 journal is cited. And it's cited more than any other
8 journal in the field of autism.

9 So I've been associated with the journal for
10 many years; as an associate editor since 1983; on the
11 editorial board since '82; and reviewed papers starting
12 in 1977; and then served as the editor of the journal
13 for ten years from 1998 to 2008.

14 Q. So if I understood correctly, you spent
15 approximately 10 or 11 years as the editor of the
16 leading journal in the field of autism?

17 A. Correct, 10 years.

18 Q. And to this day do you still do peer reviews
19 of --

20 A. I do.

21 Q. -- works authored by others?

22 And I'm skipping around on your CV just a
23 little bit but if you'd look between pages 2 and 4, a
24 list of special honors and awards. Is there a
25 particular lifetime award or lifetime career achievement

1 award that stands out?

2 A. The Autism Society of America, which is the --
3 one of the largest parent professional groups in the
4 country, which was established around 1965, they have a
5 large or special contributions -- career contributions
6 in the field. They call it their Founder's Award. And
7 I was honored with that in 2010.

8 Q. How many people have received the Founder's
9 Award?

10 A. Since I know I was the fifth person to receive
11 the award. And at the time I received it -- I'm not
12 sure since then -- I think I was the only one of those
13 people still living.

14 Q. Thank you. Have you had occasion in the past
15 to participate as an expert witness in any form of
16 litigation whether it be judicial or administrative
17 kinds of proceedings?

18 A. Yes, I have.

19 Q. And have you qualified as an expert in
20 psychology or specifically in developmental disabilities
21 or autism on other occasions?

22 A. Yes, I have.

23 Q. About how many occasions have you been admitted
24 by a court or a proceeding as an expert in those fields?

25 A. I would guess over the years, 20, 25, something

1 like that.

2 MR. LESSLEY: Your Honor, we'd ask that the
3 court accept Exhibit A as his CV and admit him as an
4 expert in the fields I just stated.

5 THE COURT: All right. I will.

6 BY MR. LESSLEY:

7 Q. Dr. Mesibov, in the course of the work that we
8 have asked you to perform, have you reviewed certain
9 records provided by my office?

10 A. Yes, I have.

11 Q. And last Friday I sent an e-mail to you,
12 Mr. Fitzgerald, and Ms. Gold with a fairly large volume
13 of attachments beginning with a redacted copy of a
14 letter I wrote to you. Do you have that -- do you have
15 that e-mail with that attachment?

16 A. I'm sorry, are you asking me that?

17 Q. Yes, Your Honor -- I'm sorry, yes, Dr. Mesibov.

18 A. Yes, I have that.

19 MR. LESSLEY: Your Honor, I've tendered to the
20 court what I've marked as Exhibit F.

21 Ms. Gold, I did not have an exhibit number on
22 it when I sent it last Friday, but it is the same
23 attachment.

24 MS. GOLD: Okay.

25 BY MR. LESSLEY:

1 Q. And is that a list of the materials that we
2 have sent you to review in the course of your duties
3 that we've retained you for?

4 A. Yes, it is.

5 Q. And to put it in a little bit of a colloquial
6 terms, it's the good, the bad, and the ugly about
7 Mr. Crawford's life; is that correct?

8 A. That's correct.

9 Q. Police reports, hospital records, other
10 materials available about his conduct, and status at
11 various times; is that correct?

12 A. Correct.

13 Q. Also includes audio and video of various
14 interactions with police authorities or hospital
15 authorities or others, correct?

16 A. That's correct.

17 Q. And in the course of your work of both -- well,
18 first of all, have you consulted also with any of
19 Mr. Crawford's family members?

20 A. I did.

21 Q. And you've also met with Mr. Crawford; is that
22 correct?

23 A. I did. That's correct.

24 Q. In the course of obtaining history or any
25 other -- well, let me also ask, does this also include

1 the reports in the discovery provided us by the
2 government in this particular case?

3 A. Yes.

4 Q. All right. And so in the course of your work
5 obtaining histories or whatever you've done, does this
6 seem to be a complete encapsulation of the documents
7 relating to Mr. Crawford's life?

8 A. It was fairly thorough and very complete, yes.

9 Q. And in writing your opinion or making your
10 assessment, you have taken these materials into account,
11 correct?

12 A. I have.

13 Q. Now, a moment ago I asked you and you answered
14 that you had met with Mr. Crawford. Could you please
15 tell us how long you met with Mr. Crawford?

16 A. I met with him for a total of ten hours over
17 two days.

18 Q. And in the course of meeting with him, did you
19 also administer certain tests?

20 A. I did.

21 Q. All right. Now, attached to my original motion
22 for pretrial release is what I labeled as Exhibit B,
23 which is entitled evaluation report, and it lasts three
24 pages, signed by you at the end. Do you have that
25 document?

1 A. I do.

2 Q. And is that a report written by you as a result
3 of your meetings with Mr. Crawford and other work that
4 you've done?

5 A. It is.

6 Q. All right. In the second paragraph of that
7 letter, it describes various tests that you've -- that
8 you administered. Can you describe those, please.

9 A. Yes. The first one is the Autism Diagnostic
10 Observation Schedule. I administered Module 4, which is
11 for adults with considerable language -- adolescents and
12 adults with considerable language, considered the so-
13 called gold standard in the field.

14 I administered the autism -- the Autistic
15 Spectrum Quotient.

16 I administered the Ritvo Autism Asperger
17 Diagnostic Scale, Revised.

18 I administered the St. Andrews Healthcare
19 HCR-20 violence risk assessment worksheet.

20 And I administered the Structured Clinical
21 Interview for DSM-IV.

22 And then there is a parent questionnaire,
23 because early history is important in the diagnosis of
24 autism. And so the -- the most commonly used one in
25 terms of diagnosis is the Social Communication

1 Questionnaire, which is SCQ. And Mrs. Crawford
2 completed that.

3 Q. And returned it to you?

4 A. And returned it to me, right.

5 Q. Now -- and did you also ask questions or
6 provide a written questionnaire to Mr. Crawford's
7 sister, Ashley?

8 A. I did. I spent an hour talking with her. And
9 she also -- there are parts of the autism -- the Social
10 Communication Questionnaire deals with things in the
11 home which occur very early, the first five years of
12 life. She wasn't able to complete that. But she did
13 complete the half that involved things that --
14 characteristics that appear later than that. So she
15 talked for an hour, and then she completed the
16 questionnaire, and returned it to me.

17 MR. LESSLEY: Your Honor, at this time I'd move
18 to admit Exhibit B, the evaluation report; and Exhibit
19 F, the list of items that he reviewed.

20 THE COURT: All right. I have the Exhibit B in
21 front of me already, but it will be admitted.

22 BY MR. LESSLEY:

23 Q. Dr. Mesibov, because we all have the written
24 report, I don't want to belabor all of the things that
25 you've written in there, but I would like to bring some

1 things out for perhaps more clarity and some more
2 elucidation. What was your diagnosis of Mr. Crawford?

3 A. Autism spectrum disorder. And under the
4 current -- the diagnostic system is currently undergoing
5 review. And under the old criteria, he would have fit
6 the characterization of Asperger's Syndrome. But that
7 is going to be eliminated as a criteria. And the
8 diagnosis is just going to be autism spectrum disorder.

9 Q. Okay. And explain to us what autism spectrum
10 disorder is or what it means in terms of a person's
11 functioning.

12 A. Okay. Well, first of all, it's a spectrum.
13 And that's important because there is an enormous range
14 of -- including people with IQs below 25 and no
15 language, as well as people with IQs of over 170, and
16 everything in between, and very, very complex language.
17 So it's a spectrum disorder.

18 It's also a neurodevelopmental disorder. So
19 that means neuro, brain. It relates to the brain. And
20 thought that the brains of people with autism function
21 differently from the brains of typical people.

22 And developmental means that it is separated
23 from things like strokes or car accidents, open head
24 injuries. These are things that happen while the brain
25 is forming. So it means that the brain is organized and

1 integrated and works differently from the brain of a
2 typical person. And this is lifelong, because it occurs
3 during the formative stage.

4 The characteristics -- the most important
5 characteristics that one looks for, although, of course,
6 everybody doesn't have all the characteristics to the
7 same degree, but the primary characteristic is social
8 interaction. That there are difficulties and problems
9 with reciprocal social interaction, kind of the back and
10 forth social communication, the back and forth.

11 There is difficulties with -- or there is a
12 characteristic pattern of narrow, repetitive behaviors
13 that one frequently sees.

14 There also is a very concrete literalness in
15 terms of their understanding of language. So people
16 with autism spectrum disorders are very good at facts.
17 They are very good at specific details, not so good at
18 concepts, not so good -- they'll read factual materials
19 rather than novels, for example, on the most part, and
20 do much better with those things.

21 There is also a difference in the sensory
22 system in the sense that their sensory system on one
23 level is sometimes more acute, they are more likely to
24 hear noises, more likely to spot the small detail in the
25 distance, but also more likely to be overwhelmed, and so

1 in other words, overstimulated by a noisy environment or
2 a bright environment or an environment where there is a
3 lot of movement.

4 There is also a tendency for emotional lability
5 in people with autism. And that is thought to be kind
6 of a combination of having difficulty understanding
7 things, particularly verbal language, difficulty
8 figuring things out, easily overwhelmed in terms of
9 their senses. So that also seems to be part of the
10 pattern. So those are the major characteristics with
11 the emphasis on the social interaction or communication.

12 I guess the other thing is -- the other aspect
13 of it that I think is really important and sometimes
14 confuses people is the difficulty of dealing with
15 multiple sources of information at the same time.

16 Erica Shane (phonetic), a famous
17 neuropsychology (sic) in 1993 wrote a paper talking
18 about a flashlight with an expanding beam and saying
19 that people with autism spectrum disorders, it's like
20 their world and their conceptual framework is like the
21 narrowest beam. So they perceive very narrow things but
22 they perceive them very acutely. Whereas typical people
23 would have a much broader beam. So those of us with
24 typical brains would be able to see multiple sources of
25 information, integrate that information, but not

1 conceptualize or see some of those details and some of
2 those facts to the same degree.

3 Q. Dr. Mesibov, now I'd like to turn our focus to
4 the immediate matter at hand, which is the matter of
5 Mr. Crawford's release from custody.

6 Are you -- you are familiar with times and in
7 his past when he has had significant behavioral problems
8 that have manifested themselves in public ways and
9 resulted in interactions with law enforcement and the
10 justice system; is that correct?

11 A. Yes, I am.

12 Q. And let me draw your attention to two such
13 times. The first time being June 2009 upon his return
14 from Panama, continuing into July of 2009. And the
15 second being the period of November 28, 2010, that is
16 the night of the mosque fire, until the middle of
17 December 2010 when he had some behavioral issues.

18 Have you received documentation of both of
19 those periods of time?

20 A. Excuse me. Yes, I did.

21 Q. All right. Police reports and court reports
22 and things like that?

23 A. Right, correct.

24 Q. And you've read some of what those episodes
25 were like. And they were -- some of them -- kind of out

1 there in terms of his behavior. Throwing urine and
2 saliva at a deputy at the jail was one instance that he
3 was at least accused of having done. Spitting food on
4 an officer. Those kinds of things. You are aware of
5 those incidents; is that correct?

6 A. Yes, sir.

7 Q. And I'd like you to talk about -- given your
8 awareness of those incidents and of his history -- to
9 talk about the question that we're leading to here,
10 which is his ability to function in a peaceful manner in
11 the community if he were to be released from custody.

12 And you've given us your written opinion about
13 that, but I'd like you to explain your thoughts, please.

14 A. Well, certainly when you look at his records
15 he's had periods of productivity and appropriate
16 behavior, and then of course the situations that you are
17 describing that you are talking about.

18 I do believe in terms of all the instruments
19 that I've given him and worked with him that he does fit
20 the diagnosis of autism spectrum disorder. And there is
21 a certain amount of emotional lability often tied to
22 anxiety in people who have autism spectrum disorders.
23 And, you know, a lot of times they can occur on a daily
24 basis, maybe more with children. We use the term
25 meltdowns where they basically lose their control and

1 their contact with reality.

2 I think in Cody's case his anxiety is higher
3 than average, at least as a young adult. I think that's
4 probably a function of his history. He's certainly had
5 a lot of unfortunate mis-events in his upbringing,
6 which, unfortunately, happens to a lot of people with
7 autism. His seem to exceed that in terms of some of the
8 abuse in his background, some of the people he thought
9 he could trust who it turned out not to be able to
10 trust, even being in programs which were closed down
11 because of harsh and inappropriate treatment. So I
12 think he was more vulnerable and more susceptible to
13 high anxiety.

14 Now, there is a small group of people with
15 autism, and probably they don't really know much about
16 this group, whether it's a history that accounts for it
17 or maybe there is something about his autism, but
18 anyway, when they are in periods of very high anxiety,
19 these people with autism are usually tied to
20 uncertainty, unpredictability, inconsistency in their
21 environment that their meltdown, if you will, becomes
22 extreme and very out of control, or to use the term "out
23 there." They use the term brief reactive psychosis as
24 probably the closest diagnosis term, but nothing fits it
25 exactly.

1 But where he goes into this state, they use
2 brief psychotic because that's what it is. He's
3 emotionally -- in emotional turmoil, overwhelmingly
4 confused and disoriented. They hallucinate. And he did
5 describe very vivid hallucinations during this period.
6 And incoherent. And that's when he does these things,
7 many of which he doesn't even remember afterwards.

8 And then, of course, the ability to control
9 himself is very, very limited at those times.

10 Q. Dr. Mesibov, let me -- let me --

11 A. (Audible) -- with autism spectrum diagnoses,
12 we know the triggers for those things, at least in this
13 group. Sometimes other people who show those behaviors,
14 we're never sure when they are going to happen, or
15 what's going to happen in public.

16 I think with Mr. Crawford, I think they occur
17 under periods of extreme anxiety and extreme stress. I
18 think sometimes in his case, again, another unfortunate
19 occurrence, is he was introduced to alcohol at a very,
20 very young age, and that sometimes when he gets
21 extremely stressed and upset, his coping strategy is to
22 consume large quantities of alcohol. And that makes the
23 anxiety worse, that makes the -- it interacts with his
24 anxiety and what's going on to make the situation even
25 worse, even more intense and longer lasting.

1 I think in his life when those triggers have
2 not occurred, and, again, he's been unfortunate, most of
3 us don't have the situation that he did where he went
4 through -- was sent to a school, it was a reputable
5 school, and then all of a sudden it closes down, and
6 he's in the middle of Costa Rica, and has to cope and
7 has to survive. And then I think in terms of some of
8 the things that were happening there, broke down. That
9 was the kind of -- more of this anxiety, which triggered
10 this.

11 And then in the situation around the mosque and
12 the fire in the mosque, and I think just by the nature
13 of the police investigation into a crime like that is
14 going to be very unpredictable because police have to go
15 one step at a time and figure out what this means and
16 then what they are going to do next. So he went through
17 this period of repeated searches at the house, certainly
18 loss of control. Sometimes his mother and sister were
19 there. Sometimes they weren't there. People he usually
20 counts on, he couldn't really count on. The publicity,
21 the neighbors, the destruction, continued police
22 presence in the neighborhood, continued uncertainty of
23 what was going to happen to him.

24 So the times that this has occurred have been
25 the times of enormous destruction and unpredictability

1 and anxiety. And I think that that's my understanding
2 of what happened in those situations. And that
3 basically there are two people. And the one who
4 is -- is -- is in situations which are organized and
5 predictable, secure, with people he can trust, where he
6 has meaningful activities to do are the ones I think he
7 does well.

8 When these triggers come, then the anxiety,
9 plus the unpredictability which grows as he gets more
10 and more anxious. And the alcohol, I think, contribute
11 to those kinds of behaviors. And those -- (inaudible).

12 Q. Dr. Mesibov --

13 A. (Inaudible.)

14 Q. Dr. Mesibov, let me stop and maybe we can put
15 all of that very helpful information in a shorter -- in
16 a context here.

17 You've described in your letter at the bottom
18 of the first page that he has a strong need for order,
19 sameness, and predictability in his daily routine.
20 Those are your words.

21 You've reviewed periods of his past when he has
22 had those things; is that correct?

23 A. I'm so sorry, I didn't hear the last part of
24 that.

25 Q. You have -- you are aware of periods of

1 Mr. Crawford's life when he has had order, sameness,
2 predictability in daily routine, when he's living at
3 home with his family and his son and did not encounter
4 problems. Are you aware of periods such as that in his
5 life?

6 A. Yeah, absolutely. I think the period once he
7 settled in after coming back from Panama and a period
8 between that and the fire at the mosque is a good
9 example of that as a young adult so --

10 Q. And that was a period of about a year?

11 A. (Inaudible) -- there have been periods of
12 settled consistency and predictability in his life when
13 he's -- when he's been able to function at a very
14 appropriate and very high level.

15 Q. Okay. So -- and just to be clear that we're
16 talking about the same period, we're basically talking
17 about the period of October 2009 until his -- the mosque
18 fire and those disturbances; is that correct?

19 A. The period from October 2009, right, until
20 November 2010, correct.

21 Q. So a period of 13 months with order, sameness,
22 and predictability in his daily routine, living with his
23 family, being with his son, in which there were not
24 behavioral problems, correct?

25 A. Correct.

1 Q. And then after he got out of Oregon State
2 Hospital in April of 2010 until his arrest in August of
3 2010, would that be another one of those periods?

4 A. As far as I could determine, yes.

5 Q. All right. And you've mentioned several times
6 the word "triggers." And what I take that to mean and
7 sometimes it helps to put it in my own words and tell me
8 if I'm right, but that is that we -- you mentioned that
9 we know what his triggers are; that his leaving this
10 period of stability and becoming into this -- I think
11 you described it as a temporary psychotic break -- is
12 predictable in the sense that we know what happens in
13 his life or what kinds of things cause him to behave
14 that way, correct?

15 A. Yeah. And that's why I think the diagnosis of
16 autism spectrum disorder is important because that is
17 usually the case with this group that those kinds of
18 behavioral outbursts do have specific triggers.

19 Q. And the triggers in Mr. Crawford's case being
20 high anxiety, stress, and perhaps in combination with
21 alcohol?

22 A. Right. In particular when his life gets -- you
23 know, to say it as briefly as possible -- out of
24 control. But for him out of control is not predictable,
25 where his behaviors or routines are the things that he

1 understands, that he's used to doing, he's no longer
2 able to do, or they no longer work, or they are no
3 longer effective, yes.

4 Q. Now, let me shift gears a little bit, and this,
5 I think, will probably be the last area that I'll cover
6 with you before we give Ms. Gold a chance, but --

7 A. Okay.

8 Q. -- the suggestion that we've made to the court
9 is that Mr. Crawford can be in one of these periods of
10 order, sameness, and predictability if he's allowed to
11 live with his mother, his sister, his son, in the home
12 that they've established.

13 The government has expressed some concern about
14 the mother, in particular, and I don't know if it
15 extends to other family members about -- they've used
16 terms like enabling or things like that.

17 Do you have any concerns about that kind of
18 behavior or any observations about what the government
19 has called enabling behavior in terms of your experience
20 and training?

21 A. Well, I think somebody who is an enabler is
22 somebody who -- you know, if she was providing him -- I
23 mean, I think somebody who provides him with alcohol,
24 that would be an enabler. And I don't think his mother
25 does that.

1 I think why some people might use that term
2 is -- and I've worked with parents with children with
3 autism who have language and conception ability for
4 38 years, and there is no group I have more respect for
5 because they have children who are puzzling. I mean,
6 Cody is, in many ways -- and I spent ten hours with
7 him -- he's a delightful, interesting, young man.

8 But there are -- and that's what the key to
9 this disability is. His cognitive ability, he's
10 (inaudible), his IQ is as high as mine probably. But
11 there are certain things and certain ways in which he is
12 like a ten-year-old. He's -- in terms of his level of
13 function. And he sometimes can be naive. He can
14 sometimes be more Pollyannaish in his understanding.
15 And he even knows this and readily talks about it, his
16 understanding of social conventions and social chitchat
17 is very, very primitive. Those things are very
18 complicated for him because that's what's difficult.

19 So his mother -- Cody's mom, as all of these
20 moms, constantly -- you know, particularly with Cody
21 because in his day, we didn't know people with autism
22 who had higher IQs. So she's constantly trying to
23 explain and help him out of situations that other people
24 think she should be able to do, he should be able to
25 handle, because she understands him better than probably

1 anybody else in the world understands him. These
2 parents understand their children like that.

3 So she -- I think she lines up in this
4 situation, he's very vulnerable, and she's certainly
5 seen his vulnerability in his life. That's contributed
6 to a lot of the areas where he has had difficulty is his
7 personal vulnerability and lack of sophistication and
8 naivete, and not being able to figure out who's his
9 friend and who's not his friend, and not having good
10 coping strategies for his anxiety.

11 So she spends her whole life, as do all of
12 these mothers, seeing that and having to try to protect
13 them. And yet having to also try to let him get his
14 freedom so that he can have a good life. And having to
15 find programs that are going to understand them.

16 So I think -- you know, I think many people
17 misinterpret, because they don't understand the autism
18 spectrum disorder, how difficult it is for these
19 parents.

20 And certainly in her filling out the
21 questionnaires and in our conversation on the telephone
22 after she did that, I think she does have a very deep
23 and good understanding of Cody, and his strengths, and
24 the ways in which he's a terrific guy, but also his
25 tremendous limitations which sometimes get him in

1 trouble. And so she's -- you know, she's running around
2 the world putting out fires, as she has been.

3 He was one of the first human identified, if I
4 remember right, for special education in the State of
5 Oregon. And he was a complicated one.

6 So I think that's the dynamic. You know, I
7 don't consider that enabling. I consider that a very
8 realistic assessment of, you know, just his positive
9 worth and value, but also to some of his --

10 THE COURT: Doctor, let me interrupt --

11 THE WITNESS: (Inaudible.)

12 THE COURT: Doctor --

13 MR. LESSLEY: Doctor --

14 THE WITNESS: (Inaudible) -- same
15 understanding. And, you know, of course she's --

16 THE COURT: Dr. Mesibov?

17 THE WITNESS: -- chosen to put Cody in the same
18 situation as often, but in terms of the living
19 situation, living with these people who he trusts, who
20 he cares about, who understand him, I mean, you know,
21 that's where he's going to get a productive life. And
22 then hopefully in the long run will -- (inaudible) --
23 because somebody should have taught him how he should
24 cope with this anxiety, because there weren't many
25 professionals who understood it. But hopefully in the

1 long run, he'll be able to learn those strategies
2 because I think this is a field where understanding --

3 THE COURT: Dr. Mesibov --

4 THE WITNESS: (Inaudible) -- that will help.

5 Yes? I'm sorry?

6 THE COURT: All right. I'm sorry to interrupt
7 you. This is Judge Coffin. We're going to run out of
8 time before the noon hour for Ms. Gold to cross-examine
9 you. So I take it you're available this afternoon?

10 THE WITNESS: I'm available as long as you need
11 me.

12 THE COURT: All right. Can we --

13 THE WITNESS: Sorry. I didn't mean to
14 (inaudible) -- I didn't know there was a time limit.

15 BY MR. LESSLEY:

16 Q. I actually just had one last -- I think this is
17 actually the last question that I had. And that is that
18 a hope was expressed that the time in jail has not made
19 Mr. Crawford into someone who is bitter or angry. And
20 you saw him relatively recently. Did you see any signs
21 of bitterness or anger that would cause you any concern?

22 A. No, I saw no signs of that at all. In fact, if
23 Cody has a weakness related to that, it's quite the
24 opposite. He's a bit Pollyannaish. And he sees the
25 whole world and everything in it maybe sometimes more

1 positively than is in his best interests, and, you know,
2 maybe more skepticism about people and their motives,
3 but I see absolutely -- I saw absolutely no sign of
4 that, towards them or towards anybody.

5 MR. LESSLEY: All right. Thank you,
6 Dr. Mesibov. Those are my questions.

7 THE WITNESS: Thank you.

8 THE COURT: All right. Ms. Gold?

9 MS. GOLD: Yes, Your Honor.

10 THE COURT: You may cross-examine.

11 MS. GOLD: Thank you.

12 CROSS-EXAMINATION

13 BY MS. GOLD:

14 Q. Dr. Mesibov, my name is Fara Gold. I'm one of
15 the prosecutors on the case.

16 A. Yes, ma'am.

17 Q. Good afternoon. I've got a few questions
18 about --

19 THE REPORTER: I'm sorry, I can't hear her.

20 THE COURT: Ms. Gold, could you slow down,
21 please. Our court reporter is having trouble.

22 (Ms. Gold continues talking while the reporter,
23 the clerk, and Judge Coffin try to intervene.)

24 THE COURT: Okay. Let's back up and start
25 over. Ms. Gold, if you can ask your question.

1 BY MS. GOLD:

2 Q. My question was, Doctor, if you could just
3 clarify what you meant by "extreme psychotic break."

4 A. Okay. I think I -- we used that term and I
5 didn't need to. I meant to use it as a comparison
6 because sometimes people understand that.

7 I think what I meant to say he had -- this is
8 what I would describe as a brief reactive, reactive to
9 the anxiety and the situation, psychosis. And then I
10 was just describing some of the characteristics of that,
11 including disorientation, overwhelming confusion,
12 hallucinations.

13 So during that period his contact with reality
14 is quite limited. And, again, I'm not quite sure how I
15 used that term, but maybe trying to compare and give an
16 understanding that he's totally incoherent,
17 overwhelmingly confused and disoriented.

18 Q. And it is fair to say that somebody who is
19 experiencing that type of psychosis can be violent?

20 A. I think they certainly do things they don't do
21 other times. And, yes, sure, that could be -- that
22 could be one of them.

23 Q. And you testified earlier that extreme anxiety
24 are triggers for Cody Crawford, correct?

25 A. Correct.

1 Q. And based upon your time with Cody in the jail,
2 you have -- you've experienced, as you said, him to be
3 slightly Pollyannaish and somewhat calm; is that fair to
4 say?

5 A. I -- certainly Pollyannaish. In terms of calm,
6 I'm not sure I said that. He was certainly calm and
7 attentive and responsive to me. I'm not sure I would
8 use the word -- I mean psychologically calm. He wasn't
9 anxious. He wasn't out of control. I mean, he's an
10 animated, interactive -- well, not interactive very
11 much, but he's an animated person and an animated
12 talker. And he gets very interested and sometimes
13 excited about the things that he talks about. So I'm
14 not sure it's the right word.

15 Q. (Inaudible.)

16 A. He certainly wasn't agitated. He certainly
17 didn't seem anxious. He certainly wasn't out of
18 control. But agitated certainly -- but enthusiastic, I
19 would say.

20 Q. Okay. But there was nothing about his behavior
21 in your time with him that was indicative of this kind
22 of extreme anxiety that could trigger an episode?

23 A. No, no, there wasn't.

24 Q. And are you aware of any such episodes since
25 he's been in custody for this particular case?

1 A. I had very little information about when he was
2 in custody. But it was certainly my impression that he
3 was polite, he was respectful. So I saw no sign of
4 anything. But, again, I was not given that. That's the
5 one period I wasn't given any access to any information
6 about him. So I just had Cody's description, but it
7 sounds like he's moved up in terms of his
8 responsibilities.

9 Q. And are you aware that the beginning of this
10 hearing when it occurred the other day, Cody read a
11 letter to the court in which he discussed getting along
12 with the deputies and being productive and making bread
13 and so forth?

14 A. I think I am aware of that. I'm not sure if I
15 saw it word for word, but I am aware of that, yes.

16 Q. Okay. And, again, that type of behavior,
17 getting along with the deputies and being productive, is
18 not consistent with these episodes triggered by extreme
19 anxiety, correct?

20 A. Correct.

21 Q. Okay. And you testified earlier that you spent
22 time with Robin Crawford; is that correct?

23 A. I didn't spend time with her directly because
24 of the schedules. I did spend time with her on the
25 phone. She did fill out the questionnaire. I did go

1 over the questionnaire. I've spent, I think, about two
2 hours with her on the telephone.

3 Q. But you didn't actually get to meet her face to
4 face, correct?

5 A. Correct.

6 Q. Okay. Did you review Cody Crawford's criminal
7 history when you wrote your evaluation report and came
8 to your conclusion that he's not a danger to the
9 community?

10 A. Correct.

11 Q. You did? So, Dr. Mesibov, you are aware of his
12 prior burglaries, assault on public safety officers,
13 distribution of marijuana and so forth?

14 A. I'm aware of those. I -- again, I think in my
15 report I said his -- when he's in a safe and secure and
16 predictable environment, and I think he's not a danger
17 to the public, and I think that's the state he's in at
18 this point, and I think would be if he were in his home.

19 So, actually, I am also aware of the time he's
20 not been. And as I said, I think those are the times
21 when those triggers are present.

22 Q. Okay. And were you aware that at some of those
23 arrests he was living with his mother, Robin Crawford?

24 A. Which ones are -- which arrests are you talking
25 about, I'm sorry?

1 Q. The burglary, the burglary, the theft, the
2 distribution of marijuana, the distribution of alcohol
3 by a minor.

4 A. Okay. In those situations, as I say, those, I
5 think, are a slightly different class of behaviors, but
6 I was not aware of dangerous and aggressive behaviors at
7 that time.

8 Q. Okay.

9 A. So I'm aware of the fact that he was living
10 with his mother, and he was arrested for these things.
11 I was not aware of aggressive behaviors at those times.

12 Q. Okay. And when there is a discussion on direct
13 examination of Robin Crawford and other enabling or
14 being a champion of her son, and I'm not -- certainly
15 not making generalizations about parents with
16 disabilities, I know there are -- a lot of them can be
17 champions.

18 Specifically with Robin Crawford, are you aware
19 of the circumstances of the role she played each time
20 Cody Crawford was arrested for something?

21 A. I don't think -- you know, I think the only one
22 that I'm very aware of -- and, again, there are a lot
23 of -- a lot of information, so I might have forgotten
24 some of the details. The only time I was very aware of
25 it was this last arrest for this offense. I don't

1 remember the role she played in the arrests at other
2 times.

3 Q. There are reports that she actually turned on
4 her video camera to record the arrests, you aren't aware
5 of that?

6 A. In this particular case --

7 Q. Okay.

8 A. Are you talking about in this -- are you
9 talking about in this case or other cases?

10 Q. I'm talking about in the past when Cody
11 Crawford was arrested, and Robin Crawford oftentimes
12 would record it with a video camera, are you aware of
13 that?

14 A. I don't remember those details. You know, I --
15 I can't say they weren't in the record, I just don't
16 remember.

17 Q. Okay. Would it be -- in your professional
18 opinion, would it add to the anxiety if his mother
19 turned on the video camera while he was being arrested?

20 A. You mean Cody's reaction to being videoed?
21 Gee, that's a good question. You know, I think those
22 are very anxious situations for him, to be sure. It
23 certainly could. You know, I don't know how he feels
24 about being videotaped. But, you know, on the other
25 hand, he has a lot of confidence in his mother, and so

1 the fact that she was doing it, you know, might mitigate
2 that. But I honestly can't say.

3 I can certainly see that that could contribute
4 to his anxiety in certain circumstances. But never --
5 he and I never talked about that or the idea of his
6 being videotaped or how he feels about it, so I couldn't
7 say definitively.

8 Q. Well, would it add to Cody's anxiety if his
9 mother tried to physically stop the police officers from
10 arresting him?

11 A. Again, you know, I don't know how Cody feels
12 about it. I -- you know, again, generalizing from
13 mothers and from what I think about his mother, you
14 know, when they are in very vulnerable situations like
15 that, when somebody is arresting them, and given some of
16 their characteristics, they don't react and don't --
17 people with autism don't deal with these situations very
18 well.

19 And I think that parents -- and probably his
20 mother, although I never talked about that, so they're
21 very afraid that they are going to incriminate
22 themselves because they are not very good about -- you
23 know, those are exactly the kinds of situations where
24 they have the most difficulty with, where you have to
25 sort through different perspectives and different ideas

1 and understand what he did and what the police are
2 trying to do, and what his rights are, and the police
3 and what his responsibilities are. You know, those are
4 horrible situations for somebody with autism spectrum
5 disorders.

6 So I think in that situation -- again, I'm
7 speculating just based on my general experience --
8 parents are usually more thinking about trying to
9 protect their vulnerable children than what the impact
10 on their children is going to be.

11 So, again, I didn't discuss that with her. I
12 didn't discuss it with Cody. It doesn't -- don't know
13 how he's feeling. It certainly could have increased his
14 anxiety, but I -- there is so much anxiety around a
15 situation like that with a child like Cody who is still
16 vulnerable that -- and, again, there is a lot going on.
17 And usually parents -- and just based on the things his
18 mother told me, I think it's true is she's trying to
19 protect him because he's very vulnerable.

20 Q. Okay. And, obviously, it's an anxious time for
21 anybody, when any child is arrested in front of their
22 parents, regardless of whether they have -- they fall in
23 the autism spectrum disorder, correct?

24 A. Yeah, any child does. But, again, they are not
25 as vulnerable. And that's a part of Cody that's very

1 vulnerable, but people who don't understand Cody and
2 Cody's difficulty and hear him talk and hear what he
3 does, don't fully appreciate how vulnerable he is. So I
4 think that, sure, it's really hard on any parent, of
5 course. And it's hard on any child. But then it's
6 particularly hard if you have a child who looks and acts
7 and sounds like a typical child, and yet is very
8 particularly vulnerable in a complicated situation like
9 that.

10 Q. Okay. Doctor, the United States' main concern
11 at this point is that is he a danger to the community.
12 And I want to press this by saying I don't doubt that
13 many people want to get out of jail.

14 But in terms of Cody's lack of danger to the
15 community, you say you don't believe he's a danger to
16 the community; is that correct?

17 A. That is correct.

18 Q. And you're basing that on the time with him; is
19 that right?

20 A. I'm basing it on my time with him. I'm basing
21 it on his history. And I'm basing it on the fact that
22 he would be in a place, you know, basically with the
23 three people in the world he cares about and he loves
24 and he trusts.

25 And that he would be -- and, you know, I think

1 some of these situations or some of these circumstances
2 when he's gotten into trouble where he's got influences
3 of other children who he thinks he can trust and he
4 can't, or the high anxiety, I mean, they don't occur all
5 the time. And I think as he gets older and counts more
6 on the people he cares about and care about him, that
7 he's less likely to fall into one of those situations.
8 I think his family understands the triggers better. So,
9 yeah, I think the triggers are much less likely to be
10 there.

11 Q. Okay. So you are basing those opinions despite
12 his criminal history and despite the fact that he lived
13 with his mother during previous times of being arrested,
14 correct?

15 A. Correct.

16 Q. And you are basing it despite the fact that he
17 had access to alcohol while living with his mother prior
18 to being arrested; is that correct?

19 A. Yeah. But I'm assuming he would not have
20 access to alcohol in this situation.

21 Q. Okay.

22 A. I don't think that was -- I don't think that
23 was a condition -- I don't think that was a condition of
24 his living there last time.

25 It would be my recommendation that that would

1 be a good idea in this case.

2 Q. Okay. And you're also basing this opinion on
3 the fact -- well, let me rephrase. If, in fact, Cody
4 did commit this arson for which he's been accused, would
5 that danger -- would that classify as a danger to the
6 community?

7 A. If he did commit -- I knew --

8 MR. LESSLEY: Your Honor, I'm going to object
9 to the question.

10 (Witness continues talking while the court
11 attempts to intervene.)

12 THE COURT: Excuse me.

13 MR. LESSLEY: Dr. Mesibov -- Dr. Mesibov --

14 THE WITNESS: (Inaudible) -- I didn't consider
15 in this situation because he doesn't have any history of
16 arson or any history of harming anybody in that sense.
17 So if I knew he did it, yeah, that would change -- I
18 would certainly reconsider it and need to understand
19 that in the context of what were the factors that led to
20 that and would those factors be there.

21 So that's not information I considered or the
22 fact that he was at risk of committing arson because I
23 don't have any information that he ever did.

24 BY MS. GOLD:

25 Q. Okay. And then the last piece that I want to

1 talk to you about and then I will wrap it up, the second
2 part of this is the idea that he's a flight risk.
3 Obviously there is no test you can give to determine
4 whether somebody is a flight risk, correct?

5 A. Yeah, I wish there were, but, no, I don't know
6 of any tests. I certainly --

7 Q. You're just -- okay. So you're just basing
8 your opinion on the fact that he wants to go home, and
9 his mother and his sister and his son are the most
10 important people in his life based upon his own self
11 report, correct?

12 A. Based on his own self report, based on my
13 discussion with him, based on his parent's perception,
14 yeah, I do think these are the people in the world he
15 trusts and cares about him. There is a very limited
16 number. And his son is his reason for living. That's
17 the meaning in his life. So I can't imagine where he
18 would go at this point.

19 Q. So you didn't consider the fact that he is, in
20 fact, facing 12 years in prison or the fact that he does
21 have ties to Panama?

22 A. (Witness begins to answer.)

23 MR. LESSLEY: Your Honor, I'll object to the
24 question. Dr. Mesibov, stop, please. I'll object to
25 the question. First, Your Honor, it assumes facts that

1 aren't true like --

2 THE COURT: Well, Ms. Gold, if I can -- excuse
3 me a second. Ms. Gold, it seems to me that you are
4 basically making argumentative points through your
5 cross-examination, and that's a matter, it seems like,
6 more appropriate for argument to the court on the issue.

7 MS. GOLD: Yes, Your Honor. I can save it for
8 argument. I just wanted to flesh out whether he --
9 (inaudible).

10 THE COURT: You need to slow down because the
11 court reporter is not being able to understand you.

12 MS. GOLD: Okay. I apologize. I'll just --
13 it's fine. I can save it for argument.

14 THE COURT: All right.

15 MS. GOLD: I have no further questions,
16 Dr. Mesibov. Thank you.

17 THE COURT: All right. We're going to be in
18 recess at this time. You don't have any more questions
19 for him, do you?

20 MR. LESSLEY: I do not, Your Honor.

21 THE COURT: All right. So, Doctor, you are
22 excused from being available anymore this afternoon
23 because the parties are -- have concluded their
24 examination and cross-examination of you. So we'll be
25 in recess --

1 THE WITNESS: Thank you, Your Honor.

2 THE CLERK: And, Mr. Wanly, if he'd like to
3 appear.

4 THE COURT: And, Mr. Wanly, we'll get you back
5 on the phone this afternoon. We'll resume again at
6 1:30.

7 MR. WANLY: Thank you.

8 THE COURT: And, Ms. Gold, we'll get you on the
9 phone at 1:30 as well.

10 MS. GOLD: Okay. Thank you.

11 THE COURT: We'll be in recess until 1:30.

12 (The proceedings were adjourned at 12:04 p.m.)

13 (Further proceedings were had and are bound
14 under separate cover.)

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CERTIFICATE

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I, Deborah Wilhelm, Certified Shorthand Reporter
for the State of Oregon, do hereby certify that I was
present at and reported in machine shorthand the oral
proceedings had in the above-entitled matter. I hereby
certify that the foregoing is a true and correct
transcript, to the best of my skill and ability, dated
this 9th day of August, 2012.

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/s/ Deborah Wilhelm

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Deborah Wilhelm, RPR
Certified Shorthand Reporter
Certificate No. 00-0363

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